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c 305 Municipal Conflict of Interest Act

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CHAPTER 305

Municipal Conflict of Interest Act

1.—(1) In this Act,

Interpreta-
tion

(a) “council” means the council of a municipality;

(b) “local board” means a local board as defined in the *Municipal Affairs Act*;R.S.O. 1980,
c. 303

(c) “municipality” means the corporation of a county, city, town, village, township or improvement district or of a district, metropolitan or regional municipality and a board, commission or other local authority exercising any power in respect of municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

(d) “ratepayer” means,

(i) in respect of a municipality or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and

(ii) in respect of a public, separate or secondary school board, a person entitled to vote at the election of members of such board;

(e) “senior officer” means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office.

(2) For the purposes of clause (3)(a), a member of a council or of a local board shall be deemed to have a controlling interest in a corporation if he beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding. ^{Idem}

Idem

(3) For the purposes of this Act, a member of a council or of a local board has an indirect pecuniary interest in a contract or proposed contract with the municipality or local board or in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board or in any other matter in which the council or local board is concerned, as the case may be,

(a) if he or his nominee is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public or has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public or is a member of a body,

(i) with which the contract is made or is proposed to be made, or

(ii) that has an interest in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board, or

(iii) that has an interest in any other matter in which the council or local board is concerned; or

(b) if he is a partner of a person, or is in the employment of a person or a body,

(i) with whom the contract is made or is proposed to be made, or

(ii) that has an interest in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board, or

(iii) that has an interest in any other matter in which the council or local board is concerned.
1972, c. 142, s. 1 (1-3).

Idem

(4) A member of a council or of a local board does not have an indirect pecuniary interest by reason only of his being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason of his being a member of a board, commission or other body as an appointee of a council or local board. 1976, c. 54, s. 1 (1).

(5) Where the number of members of a council or of a local board who have an indirect pecuniary interest by reason of the application of clause (3) (b) is such that at any meeting the remaining members are not of sufficient number to constitute a quorum, then, notwithstanding any other general or special Act, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two. 1972, c. 142, s. 1 (5). Quorum deemed constituted

(6) Where, in the circumstances mentioned in subsection (5), the remaining number of members of council who do not have an indirect pecuniary interest is less than two, the council may apply to a judge for an order authorizing the council to give consideration to, discuss and vote on the contract, proposed contract or other matter out of which the indirect pecuniary interest arises. Application to judge

(7) The judge may, on an application brought under subsection (6), by order, declare that this Act does not apply to the council in respect of the contract, proposed contract or other matter in relation to which the application is brought, and the council thereupon may give consideration to, discuss and vote on the contract, proposed contract or other matter in the same manner as though none of the members of council had any indirect pecuniary interest therein. 1976, c. 54, s. 1 (2). Power of judge to declare Act not to apply

2.—(1) Where a member of a council or of a local board, either on his own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, Duty to disclose interest in contracts, etc.

(a) in any contract or proposed contract with the municipality or local board, as the case may be;

(b) in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or local board; or

(c) in any other matter in which the council or local board is concerned,

and is present at a meeting, including a committee or other meeting, of the council or local board at which the contract, proposed contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose his interest and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way to influence the voting on any such question.

Idem

(2) Where the interest of a member of a council or of a local board has not been disclosed as required by subsection (1) by reason of his absence from the meeting referred to therein or by reason of such interest having been acquired after such meeting, he shall disclose his interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by him after the meeting referred to in subsection (1) or after acquiring such interest.

Idem,
associates

(3) The interest of any spouse, son, daughter or any other relative of a member of a council or local board who has the same home as such member, shall if known to the member, be deemed for the purposes of this section to be also an interest of the member.

Where
subss. (1, 2),
do not apply

(4) Subsections (1) and (2) do not apply to an interest in a contract, proposed contract or other matter that a member may have,

(a) as a ratepayer, or as a user of any public utility service supplied to him by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members of the council or local board;

(b) by reason of his being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;

(c) by reason of his purchasing or owning a debenture of the municipality or local board; or

(d) by reason of his having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to all other ratepayers.

Disclosure
of interest
to be
recorded

(5) Every disclosure of interest under subsection (1) or (2) shall be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the local board, as the case may be.

Proceedings
not invalid-
ated, but
voidable

(6) The failure of any person to comply with subsection (1) or (2) does not of itself invalidate any contract, or the proceedings in respect of any proposed contract or other matter mentioned in subsection (1) or (2), but the contract or the proceedings in respect of any proposed contract or other matter are voidable at the instance of the municipality or of the local board, as the case may be, before the expiration of two

years from the date of the passing of the by-law or resolution authorizing the contract or proposed contract or other matter. 1972, c. 142, s. 2.

3.—(1) In this section and in sections 4 and 5, “judge” ^{Interpretation} means a judge of the county or district court of the county or district in which the municipality is situate or in which the local board has jurisdiction.

(2) The question of whether or not a member of council or of a local board has contravened subsection 2 (1) or (2) may be tried and determined by a judge. 1972, c. 142, s. 3. ^{Who may try alleged contravention of subss. 2 (1, 2)}

4.—(1) Subject to subsection (3), a ratepayer may, within six weeks after the fact comes to his knowledge that a member of a council or of a local board may have contravened subsection 2 (1) or (2), apply to the judge by way of originating notice in the manner prescribed by the rules of court for a determination of the question of whether or not a member of a council or of a local board has contravened subsection 2 (1) or (2). ^{Originating notice}

(2) The ratepayer in his notice of motion shall state the grounds for finding a contravention by the member of council or of a local board of subsection 2 (1) or (2). ^{Contents of notice of motion}

(3) No application shall be brought under subsection (1) after the expiration of the term of office of the member of council or local board during which the contravention is alleged to have occurred. 1972, c. 142, s. 4. ^{Time for bringing application limited}

5.—(1) Where the judge determines that a member of council or of a local board has contravened subsection 2 (1) or (2), he shall, subject to subsection (2) of this section, declare the seat of the member vacant and may disqualify him from being a member of any council and of any local board during a period thereafter of not more than seven years. 1972, c. 142, s. 5 (1). ^{Judge may declare seat vacant and disqualify member}

(2) Where the judge determines that a member of council or of a local board has contravened subsection 2 (1) or (2), if the judge finds that the contravention was committed through inadvertance or by reason of a *bona fide* error in judgment or that the interest of the member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member, the member is not subject to having his seat declared vacant or to being disqualified as a member, as provided by subsection (1). 1976, c. 54, s. 2. ^{Saving}

Appeal to
Divisional
Court

6.—(1) An appeal lies from any order made under section 5 to the Divisional Court in accordance with the rules of court.

Judgment

(2) The Divisional Court may give any judgment that ought to have been pronounced and its decision is final. 1972, c. 142, s. 6.

Application
of Act,
to filling
vacancies

7.—(1) Section 2 does not apply to the election or appointment of a member of a council or local board to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position.

to considera-
tion of
benefits to
which all
members
entitled

(2) Nothing in this Act prevents a member of the council or of a local board from taking part in the consideration or discussion of, or from voting on any question in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which he may be entitled by reason of being a member of the council or local board or otherwise by law, as the case may be. 1972, c. 142, s. 7.

Conflict

8. In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails. 1972, c. 142, s. 8.